

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

KEITH BARTELLI,

Plaintiff,

v.

WILLIAM LEWIS,

Defendant.

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CIVIL ACTION NO. 3:CV-04-0908
(JUDGE KOSIK)

MEMORANDUM AND ORDER

AND NOW, THIS 16th DAY OF NOVEMBER, 2005, IT APPEARING TO THE
COURT THAT:

[1] On April 26, 2004, plaintiff filed the above-captioned action pursuant to
42 U.S.C. § 1983, against William Lewis, Fritz Bleich, and John Galabinski;

[2] the matter was assigned to United States Magistrate Judge Thomas M.
Blewitt;

[3] on October 29, 2004 this court adopted in part a Report and
Recommendation filed by Magistrate Judge Blewitt and entered an order
dismissing defendants Galabinski and Bleich, but permitting Bartelli to proceed
against defendant Lewis;

[4] the defendant filed a motion for summary judgment or for judgment on
the pleadings on May 25, 2005; (Doc. 36)

[5] both parties briefed the motion for summary judgment; (Docs. 43, 45,
and 48)

[6] Magistrate Judge Blewitt issued a Report and Recommendation on
September 9, 2005, suggesting that we grant the defendant's motion and enter

judgement in favor of the defendant on all of Bartelli's claims; (Doc. 49)

[7] neither the plaintiff, nor the defendant filed objections to the Report and Recommendation;

[8] on September 29, 2005, this court entered an order adopting Magistrate Judge Blewitt's Report and Recommendation, entering judgment in the defendant's favor, and closing the case; (Doc. 51)

[9] on October 5, 2005, Bartelli filed a notice of change of address, indicating that he had been transferred from the State Correctional Institution at Dallas (SCI Dallas), Pennsylvania, to SCI Huntingdon; (Doc. 52)

[10] Bartelli filed another document on October 5, 2005, alleging that the staff at both SCI Huntingdon and SCI Dallas interfered with his mail and refused to deliver plaintiff's legal documents;

[11] Bartelli additionally requested an extension of time, until October 8, 2005, to file objections to the various Report and Recommendations entered in his numerous 42 U.S.C. § 1983 lawsuits before this court;

[12] the document did not reference any specific case or docket number and was filed by the Clerk of Courts under the case of *Bartelli v. Jones*, 04-CV-0906, Doc. 69;

[13] plaintiff never filed the Objections referenced in the October 5, 2005, document;

[14] on November 14, 2005, Bartelli filed the document presently at issue, an "Opposition Motion Against Defendant's Second Motion for Summary Judgment;" (Doc. 53)

[15] the document appears to be a supplemental brief in response to the defendant's motion for summary judgment or for judgment on the pleadings filed May 25, 2005; (Doc. 36)

[16] the assertions contained in the plaintiff's brief are now moot as defendant's motion was granted over 45 days ago;

[17] were this court inclined to accept Bartelli's November 14, 2005 filing as belated Objections to the Report and Recommendation of Magistrate Judge Blewitt, and overlook the untimely nature of the document, we would not alter our September 29, 2005 order adopting the Report and Recommendation;

[18] we adopted the Report and Recommendation and granted the defendant's motion as the defendant established: (1) that Bartelli failed to exhaust the administrative remedies regarding his first claim; (2) that Bartelli's second claim failed to establish a cognizable cause of action for retaliation under 42 U.S.C. § 1983 where the defendant demonstrated through unchallenged evidence that he filed a misconduct report against Bartelli before he was aware that Bartelli had filed a grievance against him; and, (3) that summary judgment should be granted in favor of the defendant on Bartelli's third claim as Bartelli failed to establish a cognizable retaliation claim where the only alleged retaliatory conduct on the part of the defendant were verbal threats and harassment;

[19] Bartelli's November 14, 2005 filing failed to present any evidence to contradict that proffered by the defendant in support of his motion for summary judgment;

[20] rather, Bartelli's most recent filing merely restated allegations of

misconduct on the part of the defendant and argued, without offering evidentiary support, that a question of fact remained as to whether the defendant knew that Bartelli filed a grievance against the defendant before the defendant filed a misconduct report on Bartelli;

[21] plaintiff's arguments are insufficient in light of the evidence presented by the defendant and more fully discussed in the September 9, 2005 Report and Recommendation;

[22] if viewed as Objections to the Report and Recommendation, Bartelli's arguments would not have altered our order of September 29, 2005, adopting the Report and Recommendation of Magistrate Judge Blewitt and entering judgment in favor of the defendant.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

[1] the plaintiff's "Opposition Motion Against Defendant's Second Motion for Summary Judgment" (Doc. 53) is **dismissed**.

s/Edwin M. Kosik
United States District Judge